



Standard Operating Procedure

Acquiring and/or Purchasing Section 404 Compensatory Mitigation Credits

Approval Authority: Clover Clamons, NRM Section Director
Review Authority: Mario Mata, NRM Mitigation POC

Effective Date: August 2019
Version: 2

Purpose of this SOP

This standard operating procedure (SOP) outlines the process for the department delegate to acquire wetland/stream compensatory mitigation credits 1) from one of the three Texas Department of Transportation (TxDOT) mitigation banks, 2) by purchasing from a third party mitigation bank using Right-of-Way (ROW) funds, and/or 3) by purchasing from a third party mitigation bank using district funds. The amount (in acres and/or linear feet) and type of impact must be known prior to implementing this SOP.

This SOP supersedes the Mitigation Procurement Policy Memorandum issued by ENV on June 17, 2013. This SOP also supersedes the Legislative Budget Board (LBB) Notification Process Memorandum issued on September 12, 2016. As of September 1, 2019, the LBB notification process is no longer required.

Subject Overview

Per the 2008 Final Compensatory Mitigation Rule, the United States Army Corps of Engineers (USACE) prefers the use of mitigation banks over permittee responsible mitigation when a project impacts waters of the U.S., including wetlands. Three single-user TxDOT mitigation banks (i.e., Anderson Tract Mitigation Bank, Blue Elbow Swamp, and Coastal Bottomlands Mitigation Bank) provide wetland credits for TxDOT on-system projects that are located within the mitigation banks' service areas. Numerous USACE-approved third-party mitigation banks offer wetland/stream credits for those projects that are not serviced by TxDOT's three mitigation banks, and for those projects that are serviced by TxDOT's mitigation banks but require stream credits. General location and credit information on TxDOT and third-party mitigation banks is available on the USACE's Regulatory In-lieu Fee and Bank Information Tracking System (RIBITS) website (https://ribits.usace.army.mil/ribits_apex/f?p=107:2). For specific, up-to-date information on any bank of interest, such as precise boundaries of the services areas or number and type of credits available, please contact the following:

1. The Natural Resources Management (NRM) Mitigation point of contact (POC) for TxDOT's mitigation banks
2. The mitigation bank sponsor for third-party mitigation banks

Authorities

The use of this SOP is Environmental Affairs Division (ENV) policy in accordance with the USACE's 2008 Final Compensatory Mitigation Rule.

Personnel

The project sponsor or department delegate, Natural Resources Management (NRM) Mitigation point of contact (POC), Environmental Affairs Division (ENV) Director, Right-of-Way Division (ROW) Director and POC, and General Counsel Division (GCD) POC have responsibilities in the following procedures.

Procedure – Acquiring Mitigation Credits from the TxDOT Mitigation Banks

1. The project sponsor or department delegate reviews all banks on the RIBITS website (https://ribits.usace.army.mil/ribits_apex/f?p=107:2) or contacts the NRM Mitigation POC to ensure that the project area is serviced by one of TxDOT's three mitigation banks (i.e., Anderson Tract Mitigation Bank, Blue Elbow Swamp, or Coastal Bottomlands Mitigation Bank).
2. The project sponsor or department delegate contacts the NRM Mitigation POC to ensure that credits are available at the TxDOT mitigation bank. If the project is an on-system project located within the service area of a TxDOT mitigation bank and appropriate credits are available, then the TxDOT bank must be used.
3. The project sponsor or department delegate submits the Section 404 permit to the USACE and proposes to withdraw credits from the appropriate TxDOT mitigation bank in order to offset any required mitigation.
4. The project sponsor or department delegate receives the USACE authorization (i.e., verification or permit).
5. The project sponsor or department delegate requests the NRM Mitigation POC withdraw mitigation credits from the appropriate TxDOT mitigation bank, per the USACE authorization.
6. The NRM Mitigation POC submits a cover letter and copy of the mitigation bank credit ledger reflecting the deduction to the USACE, per the USACE authorization, as documentation of compliance with the mitigation requirement.

The procedure is complete.

Procedure – Purchasing Third Party Mitigation Credits with ROW Funds

1. The project sponsor or department delegate reviews all banks on the RIBITS website (https://ribits.usace.army.mil/ribits_apex/f?p=107:2) to determine which mitigation bank service area(s) service(s) the proposed project location.
 - If the project is an on-system project located within the service area of a TxDOT mitigation bank and appropriate credits are available, then the TxDOT bank must be used. See **Procedure - Acquiring Mitigation Credits from the TxDOT Mitigation Banks**, above.
 - Note that credits may be acquired/purchased from multiple mitigation banks in order to satisfy project mitigation requirements identified in the USACE authorization.
2. The project sponsor or department delegate determines the number of mitigation credits needed for purchase from all banks that service the project area. It should be noted that there may be any number of banks servicing a given project area, ranging from none to many. If there are no banks servicing the project area, the project sponsor or department delegate must consider other options, such as use of an out-of-area bank or permittee-responsible mitigation, and this SOP may not apply.
 - A. A conditional and/or functional assessment of the impact area may be necessary in order to determine the number and type of credits required for mitigation using a non-heritage/ legacy bank. The type of conditional and/or functional assessment performed must match the assessment methodology used to establish the bank(s), or the results of the performed



SOP: Acquiring and/or Purchasing Mitigation Credits

assessment must be able to be converted to the assessment methodology the bank(s) using a conversion rate or rates approved by the USACE.

- B. Calculate the number of credits, by type, needed based on the formula in the mitigation banking instrument (MBI). The number of credits, by type, must be determined and/or verified by the project sponsor or department delegate.
3. The project sponsor or department delegate solicits bids (i.e., draft mitigation bank agreements that exhibit cost per credit, by type) from all mitigation banks that service the project area, regardless of what service area (i.e., primary, secondary, or tertiary) the project is located within, and have the appropriate number and type of credits available.
 - A. Contact each mitigation bank that services the project area.
 - B. Determine whether or not the mitigation bank has the appropriate number and type of credits available.
 - C. Determine the cost per credit, by type, and request total mitigation cost (i.e., a bid) for all necessary credits, by type.
4. Select the best value (i.e., lowest cost) mitigation option after analyzing all offers.
 - A. Create a table of all banks that service the project area with the following information (use more than one line per bank, if needed, for more than one type of credit at that bank):

Best Value Mitigation Table					
Bank Name	Credit Type	Rate per Credit	Total Credits	Total Cost	Selected (Y/N)

- B. Select the best value mitigation option based on total cost, and include this table with the draft mitigation agreement identified in Step 3, above.
5. The project sponsor or department delegate submits the draft mitigation agreement(s), associated table, and selected option(s) with any necessary explanation other than cost via email to the General Counsel Division (GCD) POC and the NRM Mitigation POC.
6. The project sponsor or department delegate addresses GCD's comments on the mitigation agreement(s), generally by facilitating resolution of disputes pertaining to legalese between the GCD POC and the mitigation bank POC(s).
7. The project sponsor or department delegate submits via email a mitigation memo packet to the ROW and ENV Division Directors, and cc's the ROW POC and NRM Mitigation POC. The following information must be included in the mitigation memo packet:
 - A. A transmittal memo detailing the proposed mitigation option that is drafted for signature by the ROW Division Director and routing to the ENV Division Director for signature,
 - B. A request for payment from ROW to purchase the mitigation credits
 - C. A request for ROW to add a parcel to the ROW CSJ

- D. The Best Value Mitigation Table or justification for bank(s) selection
- E. A statement verifying that a TxDOT mitigation bank was not available for mitigation purposes on this project because 1) the project is off-system, 2) no TxDOT mitigation bank services the project area, and/or 3) the necessary number and/or type of credits are not available.
- F. A copy of the draft mitigation agreement(s) (without signatures) from the mitigation bank(s)
- G. The following information, either included as a component of the mitigation bank agreement(s) or provided as additional information by the project sponsor or department delegate:
 - a. Project or Roadway Name/Number
 - b. County(ies) where the project is located
 - c. Project Control Section Job Number (CSJ)
 - d. USACE permit number and date of authorization, if applicable
 - e. Total amount of impacts in acres and/or linear feet by type of WOUS
 - f. Total amount of impacts in acres and/or linear feet by single and complete crossing for all crossings requiring mitigation
 - g. Quality of WOUS impacted, either presented using the high-medium-low profile or as the resulting score(s) of the appropriate USACE-approved conditional/functional assessment methodology
 - h. Geographic service area(s) (i.e., primary, secondary, or tertiary) servicing the project area and any applicable multiplier
 - i. The applicable formula(s) for credit calculation, including the calculation itself (i.e., show your work), along with written indication that the calculation was performed or verified by the project sponsor or department delegate
 - j. Total cost for all credits, by cost per type of credit
- 8. The ROW Division Director signs the memo, and the ROW POC forwards the memo to the ENV Division Director for review and approval/signature and copies the NRM Mitigation POC.
- 9. The ENV Division Director approves the proposed mitigation option and signs the memo.
- 10. The NRM Mitigation POC notifies the project sponsor or department delegate that the banking agreement(s) can be signed.
- 11. The District Engineer or Deputy District Engineer signs the mitigation banking agreement(s).
- 12. The ROW POC facilitates routing of the funds to the mitigation bank(s) for credit purchase.
- 13. The mitigation bank(s) provide(s) a letter to the USACE/project sponsor or department delegate indicating that the mitigation has been purchased. The letter must include sufficient detail to serve as a purchase receipt, as well as confirmation that the mitigation requirement associated with the USACE authorization has been satisfied.
- 14. The project sponsor or department delegate notifies the NRM Mitigation POC of the credit transaction, and the NRM Mitigation POC reflects the purchase in ENV's mitigation tracking spreadsheet.

The procedure is complete.

Procedure – Purchasing Third Party Mitigation Credits with District Funds

1. The project sponsor or department delegate reviews all banks on the RIBITS website (https://ribits.usace.army.mil/ribits_apex/f?p=107:2) to determine which mitigation bank service area(s) service(s) the proposed project location.
 - A. If the project is an on-system project located within the service area of a TxDOT mitigation bank and appropriate credits are available, then the TxDOT bank must be used. See **Procedure - Acquiring Mitigation Credits from the TxDOT Mitigation Banks**, above.
 - B. Note that credits may be acquired/purchased from multiple mitigation banks in order to satisfy project mitigation requirements identified in the USACE authorization.
2. The project sponsor or department delegate determines the number of mitigation credits needed for purchase from all banks that service the project area. It should be noted that there may be any number of banks servicing a given project area, ranging from none to many. If there are no banks servicing the project area, the project sponsor or department delegate must consider other options, such as use of an out-of-area bank or permittee-responsible mitigation, and this SOP may not apply.
 - A. A conditional and/or functional assessment of the impact area may be necessary in order to determine the number and type of credits required for mitigation using a non-heritage/legacy bank. The type of conditional and/or functional assessment performed must match the assessment methodology used to establish the bank(s), or the results of the performed assessment must be able to be converted to the assessment methodology the bank(s) using a conversion rate or rates approved by the USACE.
 - B. Calculate the number of credits, by type, needed based on the formula in the mitigation banking instrument (MBI). The number of credits, by type, must be determined and/or verified by the project sponsor or department delegate.
3. The project sponsor or department delegate solicits bids (i.e., draft mitigation bank agreements that exhibit cost per credit, by type) from all mitigation banks that service the project area, regardless of what service area (i.e., primary, secondary, or tertiary) the project is located within, and have the appropriate number and type of credits available.
 - A. Contact each mitigation bank that services the project area.
 - B. Determine whether or not the mitigation bank has the appropriate number and type of credits available.
 - C. Determine the cost per credit, by type, and request total mitigation cost (i.e., a bid) for all necessary credits, by type
4. Select the best value (i.e., lowest cost) mitigation option after analyzing all offers.
 - A. Create a table of all banks that service the project area with the following information (use more than one line per bank, if needed, for more than one type of credit at that bank):



SOP: Acquiring and/or Purchasing Mitigation Credits

Best Value Mitigation Table					
<u>Bank Name</u>	<u>Credit Type</u>	<u>Rate per Credit</u>	<u>Total Credits</u>	<u>Total Cost</u>	<u>Selected (Y/N)</u>

- B. Select the best value mitigation option based on total cost, and include this table with the draft mitigation agreement identified in Step 3, above.
5. The project sponsor or department delegate submits the draft mitigation agreement(s), associated table, and selected option(s) with any necessary explanation other than cost via email to the General Counsel Division (GCD) POC and the NRM Mitigation POC.
6. The project sponsor or department delegate addresses GCD's comments on the mitigation agreement(s), generally by facilitating resolution of disputes pertaining to legalese between the GCD POC and the mitigation bank POC(s).
7. The project sponsor or department delegate submits via email a mitigation memo packet to the ENV Division Director, and cc's the NRM Mitigation POC. The following information must be included in the mitigation memo packet:
- A. A transmittal memo detailing the proposed mitigation option that is drafted for signature by the ENV Division Director,
 - B. The Best Value Mitigation Table or justification for bank(s) selection
 - C. A statement verifying that a TxDOT mitigation bank was not available for mitigation purposes on this project because 1) the project is off-system, 2) no TxDOT mitigation bank services the project area, and/or 3) the necessary number and/or type of credits are not available.
 - D. A copy of the draft mitigation agreement(s) (without signatures) from the mitigation bank(s)
 - E. The following information, either included as a component of the mitigation bank agreement(s) or provided as additional information by the project sponsor or department delegate:
 - a. Project or Roadway Name/Number
 - b. County(ies) where the project is located
 - c. Project CSJ
 - d. USACE permit number and date of authorization, if applicable
 - e. Total amount of impacts in acres and/or linear feet by type of WOUS
 - f. Total amount of impacts in acres and/or linear feet by single and complete crossing for all crossings requiring mitigation
 - g. Quality of WOUS impacted, either presented using the high-medium-low profile or as the resulting score(s) of the appropriate USACE-approved conditional/functional assessment methodology
 - h. Geographic service area(s) (i.e., primary, secondary, or tertiary) servicing the project area and any applicable multiplier



SOP: Acquiring and/or Purchasing Mitigation Credits

- i. The applicable formula(s) for credit calculation, including the calculation itself (i.e., show your work), along with written indication that the calculation was performed or verified by the project sponsor or department delegate
 - j. Total cost for all credits, by cost per type of credit
8. The ENV Division Director approves the proposed mitigation option and signs the memo.
9. The NRM Mitigation POC notifies the project sponsor or department delegate that the banking agreement(s) can be signed.
10. The District Engineer or Deputy District Engineer signs the mitigation banking agreement(s).
11. The project sponsor or department delegate works with their district finance/contracting staff, as necessary to facilitate routing of the funds to the mitigation bank(s) for credit purchase.
12. The mitigation bank(s) provide(s) a letter to the USACE/project sponsor or department delegate indicating that the mitigation has been purchased. The letter must include sufficient detail to serve as a purchase receipt, as well as confirmation that the mitigation requirement associated with the USACE authorization has been satisfied.
13. The project sponsor or department delegate notifies the NRM Mitigation POC of the credit transaction, and the NRM Mitigation POC reflects the purchase in ENV's mitigation tracking spreadsheet.

The procedure is complete.



Appendix A: Acronyms and Definitions

Acronyms

Acronym	Full Name
CSJ	Control Section Job Number
ECOS	Environmental Compliance Oversight System
ENV	Environmental Affairs Division
GCD	General Counsel Division
NRM	Natural Resources Management Section
POC	Point of Contact
RIBITS	Regulatory In-lieu Fee and Bank Information Tracking System
ROW	Right-of-Way Division
SOP	Standard Operating Procedure
TxDOT	Texas Department of Transportation
USACE	United States Army Corps of Engineers



Appendix B: Revision History

Revision History	
Effective Date Month, Year	Reason for and Description of Change
June 2019	Version 1 was released.
August 2019	Version 2 was released. Changes address the removal of Legislative Budget Board (LBB) notification. This requirement was removed in the 2019 legislative session and is effective September 1, 2019.